

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ANTHONY DERAY BENN, JR.,

Plaintiff,

Case No. 23-cv-12479
Hon. Brandy R. McMillion

v.

Mag. Judge Elizabeth A. Stafford

ALEXANDER AQUILINE,

Defendant.

/

**ORDER ADOPTING RECOMMENDED DISPOSITION OF REPORT AND
RECOMMENDATION (ECF NO. 37), GRANTING DEFENDANT'S
MOTION TO DISMISS (ECF NO. 13) AND DISMISSING PLAINTIFF'S
COMPLAINT (ECF NO. 1)**

Plaintiff Anthony Deray Benn, Jr. ("Benn"), an inmate in the Michigan Department of Corrections, brings this *pro se* civil rights action against Defendant Alexander Aquiline ("Aquiline"), pursuant to 42 U.S.C. § 1983. ECF No. 1. Benn alleges that Aquiline sexually assaulted him during a pat-down search following an unlawful traffic stop of Benn's vehicle, in violation of the Fourth, Fifth, Sixth and Eighth Amendments. *Id.*

This matter was originally assigned to the Honorable Judith E. Levy, who referred all pretrial matters to Magistrate Judge Elizabeth A. Stafford. ECF No. 8. On February 20, 2024, Aquiline filed a Motion to Dismiss in lieu of answering the

complaint. ECF No. 13. The matter was reassigned to the undersigned on April 2, 2024. On April 4, 2024, this Court re-referred all pretrial matters to Magistrate Judge Stafford, including the Motion to Dismiss. ECF No. 19.

On August 12, 2024, in a Report and Recommendation (“R&R”), the Magistrate Judge recommended that the Court grant Defendant’s Motion to Dismiss on the grounds contained therein, or in the alternative to dismiss *sua sponte*. ECF No. 37. At the end of the R&R, the Magistrate Judge advised the parties that to seek review of her recommendation, they had to file specific objections with the Court within 14 days of service of the R&R. *Id.* at PageID.181-182. As of the date of this order, September 5, 2024—24 days since the Magistrate Judge filed the R&R—neither party has filed objections to the R&R or contacted the Court to ask for more time to file objections.

The failure to object to an R&R releases the Court from its duty to independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also Ivey v. Wilson*, 832 F.2d 950, 957-58 (6th Cir. 1987) (explaining that a party’s failure to timely object to a report and recommendation allows a court to accept the recommendation “without expressing any views on the merits of the magistrate’s conclusions”). Similarly, failure to object to an R&R forfeits any further right to appeal. *See Berkshire v. Dahl*, 928 F.3d 520, 530 (6th Cir. 2019) (recognizing that a party forfeits their right to appeal by failing to timely file objections to an R&R).

Accordingly, because neither party objected to the R&R, **IT IS HEREBY ORDERED** that the Magistrate Judge's recommended disposition of Defendant's motion (ECF No. 37) is **ADOPTED**.

IT IS ORDERED that Defendants' Motion to Dismiss (ECF No. 13) is **GRANTED**. Plaintiff's Complaint (ECF No. 1)¹ is **DISMISSED WITH PREJUDICE**.

This is a final order that closes the case.

IT IS SO ORDERED.

Dated: September 5, 2024

s/Brandy R. McMillion
Hon. Brandy R. McMillion
United States District Judge

¹ Plaintiff attempted to file an Amended Complaint on September 4, 2024. However, the Court is striking that Amended Complaint (ECF No. 40) as untimely. Therefore, the original Complaint (ECF No. 1) remains the operative filing document in this case and is hereby dismissed.